



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0180]

**Hours of Service of Drivers: Application for Exemption from the 14-Hour Rule
During Independence Day Celebrations for Illumination Fireworks Partners, LP
and ACE Pyro, LLC**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Illumination Fireworks Partners, LP and ACE Pyro, LLC (Applicants) for an exemption from the requirements that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The exemption would apply solely to the drivers of 60 CMVs employed by the applicant in conjunction with staging fireworks shows in celebration of Independence Day during the period of June 26-July 8, for the next five years (2019-2024) inclusive. During this period, the CMV drivers employed by the applicant would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60 and 70-hour on-duty limits. The applicant maintains that the terms and conditions of the limited exemption would ensure a level of safety equivalent to or greater than the level of safety achieved without the exemption.

DATES: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2019-0180 using any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your

comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0180), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2019-0180” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2019-0180” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been

conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Illumination Fireworks Partners, LP (USDOT 3247742) and ACE Pyro, LLC (USDOT 1352892) (Applicants) are fireworks display companies that employ CMV drivers who hold commercial driver's licenses (CDLs) with hazardous materials endorsements. The drivers transport Division 1.3G and 1.4G fireworks and setup of firework shows for Independence Day celebrations. The applicants seek an exemption from the 14-hour rule in 49 CFR 395.3(a)(2) so that drivers would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. Illumination Fireworks Partners, LP states that the basis for the request is the existing FMCSA exemption granted to Illumination Fireworks, LLC and ACE Pyro, LLC under Docket No. FMCSA-2014-0111. The applicants state

that they are seeking the HOS exemption because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulation means that most shows would require two drivers, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show should they have fireworks remaining after the display. Drivers would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, the applicant offers short distance driving from the distribution point to the site of the fireworks display, no more than 150 miles. Drivers have several hours of off duty in the late afternoon and early evening the day of the event. In addition, drivers drive in the early morning during light traffic. Lastly, the applicant states that they have not been involved in any reportable accidents while operating under terms and conditions of the same exemption granted to the previous owner of the company.

A copy of the application for exemption is available for review in the docket for this notice.

Issued on: October 11, 2019.

Larry W. Minor,

Associate Administrator for Policy.

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